

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ALPHONSO R. LEE,

Plaintiff,

v.

AFT-YAKIMA,

Defendant.

NO. CV-09-3112-EFS

**ORDER DENYING PLAINTIFF'S  
POST-JUDGMENT MOTIONS**

Before the Court, without oral argument, are two motions filed by Plaintiff Alphonso Lee: Plaintiff's Motion to Vacate Dismissal, ECF No. [96](#), and Plaintiff's Motion for Reconsideration, Leave to File Supplemental Complaint and Amended Complaint, ECF No. [98](#). After reviewing the submissions of the parties, the record in this case, and applicable authority, the Court is fully informed and denies Mr. Lee's motions.

**BACKGROUND**

Mr. Lee filed the instant complaint in Yakima County Superior Court against AFT-Yakima on October 30, 2009, alleging breach of the duty of fair representation, violation of privacy rights, defamation, violation of psychotherapist confidentiality, and discrimination in violation of Title VII. ECF No. [1](#) at 9-14. AFT-Yakima removed the matter to this Court on November 17, 2009. [Id.](#)

1 AFT-Yakima moved for summary judgment on February 22, 2011. ECF No.  
2 [59](#). Mr. Lee filed a Motion to Amend to Find that the AFT-Yakima Failed  
3 in its Duty to Represent Mr. Lee in Grievances with Fair Representation  
4 on March 25, 2011, ECF No. [75](#), and a Motion to Apply Claw-Back Rule to  
5 the Defendant's Evidence on March 28, 2011, ECF No. [78](#). On June 3, 2011,  
6 the Court granted AFT-Yakima's Motion for Summary Judgment, denied Mr.  
7 Lee's two motions, and closed this case. ECF No. [94](#).

8 On June 27, 2011, Mr. Lee filed a Motion to Vacate Dismissal  
9 pursuant to Federal Rule of Civil Procedure 60(b). ECF No. [96](#). On July  
10 5, 2011, Mr. Lee filed a Motion for Reconsideration, Leave to File  
11 Amended Supplemental Complaint and Amended Complaint and Notice of  
12 Appeal, ECF No. [98](#). The Court construed this document as two separate  
13 filings: a Motion for Reconsideration, Leave to File Supplemental  
14 Complaint and Amended Complaint, and a Notice of Appeal to the Ninth  
15 Circuit Court of Appeals. See ECF Nos. [98](#) & [102](#). Mr. Lee has since  
16 filed the following additional documents: Response in Support of Trial,  
17 ECF No. [109](#); Additional Supplemental Pleadings, ECF No. [110](#); and Addition  
18 to Supplemental Pleadings and Reconsideration, ECF No. [111](#).

19 On July 13, 2011, the Ninth Circuit issued an Order holding appeal  
20 proceedings in abeyance pursuant to Federal Rule of Appellate Procedure  
21 4(a)(4) until this Court ruled on Mr. Lee's two outstanding motions. ECF  
22 No. [107](#). The Court now addresses Mr. Lee's two motions.

## 23 DISCUSSION

### 24 I. Authority to Address Mr. Lee's Motions

25 Ordinarily, once a timely notice of appeal has been filed, district  
26 courts no longer have jurisdiction over a case and lack authority to

1 address post-judgment motions. *See Davis v. Yageo Corp.*, 481 F.3d 661,  
2 685 (9th Cir. 2007)("Once an appeal is filed, the district court no  
3 longer has jurisdiction to consider motions to vacate."). Prior to 2009,  
4 a party seeking to have a post-judgment motion addressed after a notice  
5 of appeal had been filed could "ask the district court whether it  
6 wishe[d] to entertain the motion, or to grant it, and then move [the  
7 Ninth Circuit], if appropriate, for remand of the case." *Gould v. Mut.*  
8 *Life Ins. Co. of N.Y.*, 790 F.2d 769, 772 (9th Cir. 1986).

9 This scheme was modified by the addition of Federal Rule of Civil  
10 Procedure 62.1(a) in March 2009. Rule 62.1(a) provides that

11 [i]f a timely motion is made for relief that the court lacks  
12 authority to grant because of an appeal that has been docketed  
13 and is pending, the court may: (1) defer considering the  
14 motion; (2) deny the motion; or (3) state either that it would  
15 grant the motion if the court of appeals remands for that  
16 purpose or that the motion raises a substantial issue.

17 Fed. R. Civ. P. 62.1(a)(effective December 1, 2009). Rule 62.1(a) thus  
18 gives the Court jurisdiction to hear Plaintiff's motion. For the reasons  
19 discussed below, the Court exercises its authority under Rule 62.1(a)(2)  
20 to deny Mr. Lee's motion. *See, e.g., United States v. Benoit*, No. 08-CV-  
21 2140-MMA(JMA), 2011 WL 2444671 (S.D. Cal. June 16, 2011)(considering and  
22 denying Rule 60(b) motion to vacate despite pending appeal).

## 23 **II. Mr. Lee's Motion to Vacate Dismissal**

24 Mr. Lee moves the Court to vacate its June 3, 2011 Order dismissing  
25 this case per Rule 60, on the ground that the Court's judgment was void.  
26 See Fed. R. Civ. P. 60(b)(4). Mr. Lee argues that the Court should  
vacate its dismissal of his case because District Judge Suko's decision  
in Mr. Lee's first case against AFT-Yakima, Case No. 08-CV-3013-LRS,

1 which this Court referenced in its statutes of limitations analyses, was  
2 decided despite a lack of subject matter jurisdiction.

3 The Court denies Mr. Lee's motion for several reasons. First, he  
4 has not demonstrated that this Court's judgment was void, and indeed,  
5 this Court's judgment was valid. The Court has subject matter  
6 jurisdiction over this case pursuant to 28 U.S.C. § 1331 because Mr.  
7 Lee's original complaint alleged federal claims against AFT-Yakima under  
8 Titles VI and VII of the Civil Rights Act of 1964. See ECF No. 1 at 9-  
9 14. Furthermore, removal jurisdiction is proper under 28 U.S.C. §  
10 1441(b). The Court thus has subject matter jurisdiction over this case,  
11 and its judgment is not void.

12 Mr. Lee's motion must also fail because the reason that he asserts  
13 that the Court's judgment was void, which is that District Judge Suko's  
14 decision in Case No. 08-CV-3013-LRS ("2008 Litigation") was itself issued  
15 without subject matter jurisdiction, has not been asserted in the proper  
16 forum. A challenge to Judge Suko's ruling must be brought before Judge  
17 Suko; indeed, such a challenge would not be time-barred despite its late  
18 assertion, because motions for relief from judgment on the basis that the  
19 judgment was void are not subject to the one-year limitation period in  
20 Rule 60(c)(1). In so stating, the Court expresses no opinion as to the  
21 validity of Judge Suko's judgment in the 2008 Litigation.

22 Finally, Mr. Lee's Motion to Vacate must be denied because even if  
23 Judge Suko's judgment in the 2008 litigation was rendered in the absence  
24 of subject matter jurisdiction, it would not affect the substance of the  
25 Court's July 3, 2011 ruling for two reasons. First, in the course of the  
26 Court's statutes of limitations analyses, the Court referenced the 2008

1 Litigation only for the limited purpose of addressing the possibility  
2 that the 2008 Litigation had tolled the statutes of limitations for some  
3 of Mr. Lee's claims; if the 2008 Litigation were indeed void for lack of  
4 subject matter jurisdiction, Mr. Lee's 2008 claims could not as a matter  
5 of law toll any statutes of limitations, and the Court's ultimate  
6 conclusion that the statutes of limitations had not been tolled would not  
7 be affected. Second, in addition to holding that seven of Mr. Lee's  
8 claims against AFT-Yakima were time-barred, the Court addressed the  
9 merits of each of Defendant's eight claims and determined that each claim  
10 had either not been properly alleged or failed on the merits. Thus,  
11 because the Court's June 3, 2011 dismissal ruling was not contingent upon  
12 the validity of the 2008 Litigation, Mr. Lee's argument must fail.

13 For these reasons, the Court denies Mr. Lee's Motion to Vacate  
14 Dismissal.

15 **III. Mr. Lee's Motion for Reconsideration, Leave to File Supplemental**  
16 **Complaint and Amended Complaint**

17 Mr. Lee's second motion contains two specific requests for relief:  
18 first, a request for vacation of the Court's June 3, 2011 Order, and  
19 second, a request for leave to file an amended complaint. Because Mr.  
20 Lee's first request reiterates the arguments he makes in his Motion to  
21 Vacate, ECF No. [96](#), the Court denies this aspect of Mr. Lee's motion for  
22 the reasons articulated in Section II, *supra*.

23 The second aspect of Mr. Lee's motion, his request for leave to file  
24 a supplemental or amended complaint, must be denied because final  
25 judgment has been entered in this case. Under Rule 15, a party may amend  
26 a complaint that has been answered only with the opposing party's consent

1 or with leave of the Court. Fed. R. Civ. P. 15(a)(2). Rule 15 dictates  
2 that "[t]he court should freely give leave when justice so requires."  
3 *Id.* However, "[a]fter final judgment has been entered, a Rule 15(a)  
4 motion may be considered only if the judgment is first reopened under  
5 Rule 59 or 60." *Proskauer Rose, LLP v. Blix St. Records, Inc.*, 384 Fed.  
6 Appx. 622, 625 (9th Cir. 2010) (citing *Lindauer v. Rogers*, 91 F.3d 1355,  
7 1357 (9th Cir. 1996)). Thus, because Mr. Lee's motions to vacate the  
8 judgment under Rule 60 have been denied, the Court must also deny Mr.  
9 Lee's motion for leave to file a supplemental or amended complaint.

#### 10 CONCLUSION

11 Mr. Lee's Motion to Vacate Dismissal under Rule 60(b)(4) is denied  
12 because Mr. Lee has not shown that the Court's judgment was void. Mr.  
13 Lee's Motion for Reconsideration, Leave to File Supplemental Complaint  
14 and Amended Complaint is denied for the same reason insofar as it seeks  
15 to vacate the Court's June 3, 2011 Order; the portion of Mr. Lee's  
16 motion that seeks leave to file an amended or supplemental complaint is  
17 also denied because the Court declines to reopen its final judgment.

18 Accordingly, **IT IS HEREBY ORDERED:**

- 19 1. Defendant's Motion to Vacate Dismissal, **ECF No. [96](#)**, is **DENIED**.  
20 2. Defendant's Motion for Reconsideration, Leave to File  
21 Supplemental Complaint and Amended Complaint, **ECF No. [98](#)**, is also  
22 **DENIED**.

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s/ Edward F. Shea  
EDWARD F. SHEA  
United States District Judge